

TO: Register of Copyrights Copyright Office Library of Congress Washington, D.C. 20559	REPORT ON THE FILING OR DETERMINATION OF AN ACTION OR APPEAL REGARDING A COPYRIGHT
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In compliance with the provisions of 17 U.S.C. 508, you are hereby advised that a court action or appeal has been filed on the following copyright(s):

<input checked="" type="checkbox"/> ACTION <input type="checkbox"/> APPEAL		COURT NAME AND LOCATION USDC/Southern District of Florida 701 Clematis Street, Room 402 West Palm Beach, FL 33401
DOCKET NO. 08CV80973-KAM	DATE FILED 9/3/2008	
PLAINTIFF General Media Communications, Inc.		DEFENDANT Planet One Holdings, Inc.
COPYRIGHT REGISTRATION NO.	TITLE OF WORK	AUTHOR OR WORK
1 <i>20TM pp. 4-7</i>	See attached	
2		
3		
4		
5		

In the above-entitled case, the following copyright(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
COPYRIGHT REGISTRATION NO.	TITLE OF WORK	AUTHOR OF WORK	
1			
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In the above-entitled case, a final decision was rendered on the date entered below. A copy of the order or judgment together with the written opinion, if any, of the court is attached:

COPY ATTACHED <input type="checkbox"/> Order <input type="checkbox"/> Judgment	WRITTEN OPINION ATTACHED <input type="checkbox"/> Yes <input type="checkbox"/> No	DATE RENDERED
CLERK	(BY) DEPUTY CLERK	DATE

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- 1) Upon initiation of action, mail copy to Register of Copyrights
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 - 5) Case File Copy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FILED BY W D.C.

2008 SEP -3 PM 4:16

STEVEN M. LARIMORE
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GENERAL MEDIA COMMUNICATIONS,
INC., a New York Corporation,

Plaintiff,

vs.

PLANET ONE HOLDINGS, INC. D/B/A
DIVA BIKINIS, a Florida
Corporation,

Defendant.

CIVIL ACTION NO.

08-80973
CIV-MARRA
MAGISTRATE JUDGE
JOHNSON

**COMPLAINT FOR TRADEMARK INFRINGEMENT, FALSE DESIGNATION OF
ORIGIN, DILUTION, UNFAIR COMPETITION, BREACH OF
LICENSE AGREEMENT, AND SPECIFIC PERFORMANCE**

COMES NOW the Plaintiff, General Media Communications, Inc.
("GMCI"), a New York corporation, and complains against Defendant,
Planet One Holdings, Inc. d/b/a Diva Bikinis, ("Defendant" or "Diva
Bikinis"), a Florida corporation, and alleges as follows:

JURISDICTION AND VENUE

1. This is an action for injunctive relief and other relief
under the Federal Trademark Act, 15 U.S.C. § 1051, et seq.,
("Lanham Act"); particularly 15 U.S.C. §§ 1114 and 1125, for
trademark infringement, false designation of origin, false
description or representation, dilution, bad faith registration of
domain name and cybersquatting and related unfair competition.
GMCI also asserts claims under Fla. Stat. § 495.151 for dilution,

and under the common law for infringement, unfair competition and breach of contract.

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1332, 1338 (a) and (b). The amount in controversy exceeds \$75,000.00 exclusive of interest and costs. This Court also has jurisdiction pursuant to 15 U.S.C. § 1121, and the doctrine of supplemental jurisdiction.

3. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) in that, upon information and belief, the wrongful acts committed by Defendant occurred in and are causing injury in this District. The parties have also consented to venue pursuant to the parties' license agreement.

PARTIES

4. GMCI is a corporation duly organized and existing under the laws of the State of New York, with offices at 6800 Broken Sound Parkway, Suite 100, Boca Raton, Florida 33487.

5. Upon information and belief, Defendant is a Florida corporation, with its principal place of business at 4274 Enfield Court, Suite 1600, Palm Harbor, Florida 34685.

PLAINTIFF'S FAMOUS TRADEMARK

6. GMCI and its affiliates are an international, multimedia enterprise that is globally recognized as one of the premier brands in adult entertainment and publishes one of the most widely circulated groups of adult lifestyle publications.

7. GMCI is the owner and publisher of the well-known, nationally recognized adult publication known as *Penthouse* magazine and is the owner of numerous trademarks for the term PENTHOUSE and a family of marks including the term PENTHOUSE (collectively, the "PENTHOUSE Marks").

8. Long prior to the acts of Defendant complained of herein, since approximately 1969, GMCI and its predecessors in interest and licensees have published a well-known adult entertainment magazine using in commerce the trademark PENTHOUSE throughout this District and United States, and internationally. Since that time, such use has been continuous and due to its enormous popularity, GMCI's PENTHOUSE publication has generated millions of dollars in sales.

9. PENTHOUSE is globally recognized as one of the premier brands in the adult entertainment industry. The PENTHOUSE portfolio of periodical publications has included more than ten (10) titles.

10. GMCI long ago capitalized on the popularity of *Penthouse* publications to expand the use of the PENTHOUSE Marks to numerous other branded products and services. These other products and services have included, but are not limited to, home video media, DVD's, CD's, calendars, lingerie, jewelry, shoes, adult toys, apparel, nightclubs, trading cards, wristwatches and clocks, cigars, candles, websites, online retail stores, retail stores,

adult entertainment services and the sponsorship of other goods and services expressly authorized by and associated with GMCI.

11. GMCI's affiliate owns and operates a growing family of PENTHOUSE-branded websites in addition to its "flagship" site www.penthouse.com. Its subscriber-based sites provide access to Penthouse's extensive library of adult videos, images and reader-submitted stories and letters. In addition, GMCI's affiliate owns or has licensed several e-commerce and promotional sites including, but not limited to, www.penthousestore.com, www.penthousejewelry.com and www.penthouselingerie.com.

12. GMCI is the owner of statutory rights, in addition to common law rights, by virtue of the following United States Trademark and Service Mark Registrations (collectively the "Registrations") for use in connection with a variety of goods and services, including without limitation:

2,952,697	PENTHOUSE BOUTIQUE (in design)	Retail store services, featuring adult products, namely, videos and DVD's, magazines, lotions, oils and novelties
1,064,636*	PENTHOUSE	Promoting the goods and services of others through advertising
3,067,272	PENTHOUSE	Computer services, namely providing an on-line magazine in the field of adult entertainment

76/636,141	PENTHOUSE	accessories, namely, metal key chains; handbags, purses, clutches, shoulder bags, satchels, tote bags, fanny packs, messenger bags, backpacks, attache cases, briefcases, luggage, garment bags for travel, toiletry bags sold or otherwise distributed empty, pocketbooks, wallets, and leather key chains
1,515,321*	PENTHOUSE	Wristwatches and clocks
1,289,736*	PENTHOUSE PETS	Air fresheners
1,074,534*	PENTHOUSE	Calendars
76/636,145	PENTHOUSE	Clothing, namely, T-shirts, polo shirts, golf shirts, tank tops, sweatshirts, jackets, sweatpants, shorts, hats, caps, bathing suits, thongs, bras, panties, and shoes
2,435,702*	PENTHOUSE	Gels for use as personal lubricants
2,686,386	PENTHOUSE	Sexual aides namely, dildos, vibrators, artificial penises, erogenous zone pumps, penis rings, penis extensions and massage apparatus
880,922*	PENTHOUSE	Magazines
2,701,927	THE GIRLS OF PENTHOUSE	Periodicals, namely a magazine featuring photographs of female pulchritude
2,738,557	PENTHOUSE	Cigars
2,738,555	THE PENTHOUSE SELECTION (in design)	Cigars

3,007,070	PENTHOUSE	Entertainment services, namely, providing live dance performances, model searches and special appearances by young women selected as centerfolds or annual award winners and night club services; Restaurant and bar services
76/637,794	THE PENTHOUSE CLUB	Clothing, namely t-shirts, polo shirts, golf shirts, tank tops, dress shirts, sweaters, sweatshirts, jackets, sweatpants, shorts, hats, visors, bathing suits, thongs, garters, sweatbands, panties, boxers
2,810,417	THE PENTHOUSE CLUB (in design)	Entertainment services, namely, providing live dance performances, model searches and special appearances by young women selected as centerfolds or annual award winners
1,092,929*	THREE KEY LOGO	Services for the sales promotion of goods of others through the medium of advertising and promotion in publications and at the point of sale
1,323,231*	THREE KEY LOGO	General Interest Magazines
1,073,618*	THREE KEY LOGO	Calendars
2,744,275	THREE KEY LOGO	Cigars
1,323,232*	ONE KEY LOGO	General Interest Magazines

6/636,147	ONE KEY LOGO	clothing, namely t-shirts, polo shirts, dress shirts, sweaters, sweatshirts, sweatbands, sweatpants, shorts, skirts, robes, dresses, hats, caps, visors, tank tops, jackets, pullovers, bathing suits, bikinis, hosiery, socks, and booty shorts
3,431,806	ONE KEY LOGO	clothing, namely, shoes, boots, baby doll lingerie, teddies, bras, panties, thongs, G-strings, garters, chemises, camisoles, cami skirt sets, bustiers and corsets

See Composite Exhibit "A".

13. The Registrations denoted with an asterisk are now incontestable in accordance with §§ 15 and 33(b) of the Lanham Act, 15 U.S.C. §§ 1065 and 1115(b).

14. Since long prior to the acts of Defendant complained of herein, GMCI has achieved wide-spread and substantial sales of its products and services designated by the PENTHOUSE Marks in commerce.

15. The PENTHOUSE Marks are and have been so commonly used by GMCI and others to identify GMCI's products and services that said products and services are now and, since long prior to the acts of Defendant complained of herein, have been generally known among the trade and the public by the PENTHOUSE Marks.

16. By virtue of long and continuous use, and since long prior to the acts of Defendant complained of herein, the PENTHOUSE Marks have developed a secondary meaning and significance, and have been readily recognizable by the public and the trade as designations associated with GMCI's products and services.

17. PENTHOUSE Marks are now and, since long prior to the acts of Defendant complained of herein, have been associated in the public mind exclusively with GMCI and its products and services. The PENTHOUSE Marks have come to identify GMCI and its products and services, and furthermore, to distinguish said products and services from the products and services of others.

18. GMCI occasionally grants to individuals and entities that satisfy its qualifications for high standards of quality, limited licenses to merchandise, produce, market, and distribute products bearing the PENTHOUSE Marks.

19. GMCI, its affiliates and its licensees have sold and continue to sell millions of dollars worth of goods and services under the PENTHOUSE Marks, and GMCI and its licensees have promoted and continue to promote GMCI's PENTHOUSE Marks throughout this District and the United States and internationally.

THE LICENSE AGREEMENT

20. On or about December 11, 2006, GMCI and Defendant entered into a written license agreement whereby GMCI granted Defendant the specific and limited right to manufacture, distribute and sell

swimwear branded with the PENTHOUSE Marks (the "Licensed Products") and prohibited Defendant from using the PENTHOUSE Marks in any other manner (the "License Agreement").

21. In Section 4(n) of the License Agreement, Defendant has acknowledged the great value, goodwill and secondary meaning associated with the PENTHOUSE Marks in the minds of the general public exclusively with GMCI and that any additional goodwill attached to the PENTHOUSE Marks created through the use of the PENTHOUSE Marks by Defendant shall inure to the benefit of GMCI alone.

22. The License Agreement commenced on December 11, 2006, and has a termination date of December 31, 2009, if not renewed or otherwise terminated pursuant to the License Agreement. Pursuant to Section 7(e) of the License Agreement, in the event of termination or expiration, Defendant is provided with a 180-day period to use its best efforts to sell the Licensed Products that are in process or on hand at the time such notice of termination is received (the "Selloff Period") subject to the payment of royalties to GMCI and compliance with License Agreement obligations in accordance with the License Agreement.

23. The License Agreement provides that Defendant shall not own or maintain any Uniform Resource Locator (URL) containing the PENTHOUSE Marks or any variation of them.

24. The License Agreement also provides that Defendant is to submit royalties to GMCI in the amount of eight percent (8%) of net sales, payable quarterly, with a varied guaranteed minimum payment per year during the License Agreement term (hereinafter referred to as "Earned Royalties"). The License Agreement further requires Defendant to submit quarterly certified statements to GMCI of all Licensed Products distributed, sold, or otherwise disposed of during the preceding calendar quarter and the amount of Earned Royalties due and payable thereon.

DEFENDANT'S ACTIVITIES

25. Contrary to the terms of the License Agreement, Defendant failed to pay GMCI all owed royalties.

26. Contrary to the terms of the License Agreement, on or about December 10, 2006, Defendant registered and used the Internet domain name www.penthouseswimwear.com two days after Defendant executed the License Agreement, through GoDaddy.com, Inc., a domain name registrar. A true and correct copy of GoDaddy.com, Inc.'s "Whois" printout for the subject domain name is attached hereto as Exhibit "B". The www.penthouseswimwear.com domain name is pointed to Defendant's main website www.divabikinis.com.

27. Contrary to the terms of the License Agreement, Defendant advertised and conducted an international "Penthouse Model Search" and registered and used the Internet domain name www.psmodelsearch.com to promote and advertise same.

28. Contrary to the terms of the License Agreement, Defendant offered for sale, advertised and, upon information and belief, sold "Penthouse Swimwear Calendars."

29. Contrary to the terms of the License Agreement, Defendant has used the PENTHOUSE Marks in a manner other than on the Licensed Products by utilizing the PENTHOUSE Marks in connection with various fashion shows, events and parties without GMCI's prior review and approval (the "Unauthorized Events"). Such uses suggest and/or create the false impression that GMCI authorizes, sponsors, sanctions or licenses the Unauthorized Events.

30. Specifically, Defendant has used the PENTHOUSE Marks in connection with Unauthorized Events including but not limited to: (1) a party and event for the release of the unauthorized "3D Penthouse Swimwear Calendar" held on July 7, 2007 at Pure Nightclub in Las Vegas hosted by two models who were inaccurately advertised and referred to as "Penthouse Pets" (see Exhibit "C"); (2) a "Penthouse Swimwear Fashion Show" held on October 20, 2007 in New York (see Exhibit "D"); (3) a "Penthouse Calendar Search and Swimwear Fashion Show" at Mansion Nightclub in Miami Beach held on November 2, 2007 (see Exhibit "E"); and (4) advertising a party and event at Prive Nightclub in Las Vegas marketed as "Penthouse Swimwear by Diva Bikinis" on July 18, 2008 (see Exhibit "F") to which GMCI ultimately consented notwithstanding Defendant's lack of authority to sponsor same.

31. Contrary to the terms of the License Agreement, Defendant created and used a "Myspace" account, www.myspace.com/penthouseswimwear, to advertise and promote Unauthorized Events. As a result of GMCI's filing of a complaint with Myspace.com, Defendant's www.myspace.com/penthouseswimwear page and account was subsequently removed.

32. The foregoing conduct of Defendant is continuing.

33. Specifically, Defendant is using the PENTHOUSE Marks in connection with Unauthorized Events and to promote the sale of PENTHOUSE-branded swimwear it has no right to sell or promote, including, an upcoming party and event at Cameo Nightclub in Miami Beach advertised as "Penthouse Swimwear by Diva Bikinis," which is scheduled to be held on September 6, 2008 (see Exhibit "G").

34. Defendant has and continues to advertise and promote the Unauthorized Events and the PENTHOUSE-branded products on the internet and elsewhere including on its www.penthouseswimwear.com website and other third party websites.

35. The use of the PENTHOUSE Marks in connection with the Unauthorized Events and websites, upon information and belief, are attempts to trade on the fame of, and goodwill associated with, these marks. In addition, this blatant use in commerce of GMCI's PENTHOUSE Marks by Defendant is likely to cause confusion among the general public that Defendant's goods and services originate with or are otherwise authorized by GMCI.

TERMINATION OF LICENSE AGREEMENT

36. In December 2007, Defendant posted a message on its www.penthouseswimwear.com and www.divabikinis.com websites that it was "terminating" the License Agreement as of January 1, 2008 for alleged breaches by GMCI.

37. Moreover, as a result of the Defendant's aforesaid unauthorized acts and material breaches of the License Agreement, on December 5, 2007, GMCI sent a letter to Defendant terminating the License Agreement effective immediately on December 5, 2007 (the "Termination Letter"). A true and correct copy of the Termination Letter is attached hereto as Exhibit "H".

38. Pursuant to Section 7(e) of the License Agreement, the Selloff Period expired on June 5, 2008.

39. The Termination Letter also demanded Defendant to: (1) pay all sums owed to GMCI for Earned Royalties; (2) immediately cease using any of the PENTHOUSE Marks except in connection with the Selloff Period; (3) and transfer the www.penthouseswimwear.com domain name to GMCI. To date, Defendant has failed and refused to comply with any of the demands in the Termination Letter.

40. On December 10, 2007, Defendant sent GMCI a response to its December 5, 2007 letter claiming that Defendant's use of the PENTHOUSE marks was lawful, offering to begin negotiations for GMCI to purchase the www.penthouseswimwear.com domain name from Defendant and indicating that Defendant would sell off its existing

inventory pursuant to Section 7(e) of the License Agreement until the expiration of the Selloff Period. See letter dated December 10, 2007 attached hereto as Exhibit "I".

41. In addition, since the termination of the License Agreement and subsequent to the expiration of the Selloff Period, Defendant has continued to use the PENTHOUSE Marks, including, but not limited to, use on PENTHOUSE-branded products and in connection with Unauthorized Events, and Defendant's www.penthouseswimwear.com, www.divabikinis.com and www.psmodelsearch.com websites and/or domain names.

42. The conduct described above has caused and is continuing to cause immediate and irreparable injury to GMCI and to its goodwill and reputation, and will continue both to damage GMCI and deceive the public unless enjoined by this Court. GMCI has no adequate remedy at law.

43. All conditions precedent to Defendant's obligations under the License Agreement described above have occurred or been waived or excused.

COUNT I
FEDERAL TRADEMARK INFRINGEMENT
[15 U.S.C. § 1114(1)]

44. GMCI incorporates herein each and every allegation set forth in Paragraphs 1 through 43 as if fully set forth herein.

45. With full knowledge and awareness of GMCI's ownership and prior use of the PENTHOUSE Marks, and the Registrations therefor,

Defendant has intentionally used in commerce, and upon information and belief, will continue to intentionally use the PENTHOUSE Marks, which use is likely to cause confusion, or to cause mistake, or to deceive, and Defendant, in Section 4(n) of the License Agreement, has acknowledged the great value, goodwill and secondary meaning associated with the PENTHOUSE Marks in the minds of the general public exclusively with GMCI and that any additional goodwill attached to the PENTHOUSE Marks created through the use of the PENTHOUSE Marks by Defendant shall inure to the benefit of GMCI alone.

46. Defendant's aforesaid acts constitute infringement of GMCI's Registrations in violation of § 32 of the Lanham Act, 15 U.S.C. § 1114.

COUNT II
FEDERAL UNFAIR COMPETITION, FALSE DESCRIPTION
AND FALSE DESIGNATION OF ORIGIN
[15 U.S.C. § 1125(a)]

47. GMCI incorporates herein each and every allegation set forth in Paragraphs 1 through 43 as if fully set forth herein.

48. As a result of GMCI's and its licensees' extensive use and promotion of its PENTHOUSE Marks, such marks enjoy considerable goodwill, widespread recognition, and secondary meaning in commerce as associated with GMCI and GMCI's authorized goods and services both in Florida and throughout the United States.

49. Defendant has intentionally used in commerce, and upon information and belief, will continue to intentionally use in commerce the PENTHOUSE Marks, which use constitutes false designation(s) of origin, false or misleading representation(s) of fact, which are likely to cause confusion, or to cause mistake, or to deceive as to affiliation, connection, or association with GMCI, or origin, sponsorship, or approval of Defendant's products and/or services by GMCI.

50. Defendant's aforesaid acts constitute unfair competition, false designation of origin, and/or false description or representation in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

COUNT III
FEDERAL DILUTION
[15 U.S.C. § 1125(c)]

51. GMCI incorporates herein each and every allegation set forth in Paragraphs 1 through 43 as if fully set forth herein.

52. The PENTHOUSE Marks are famous and widely recognized by the general consuming public and possess a high degree of distinctiveness.

53. Defendant's aforesaid acts, commencing after the PENTHOUSE Marks became famous and distinctive, constitute dilution in violation of § 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

54. Defendant's aforesaid acts have harmed GMCI's reputation, severely damaged GMCI's goodwill, and diluted the PENTHOUSE Marks.

COUNT IV
BAD FAITH REGISTRATION OF
DOMAIN NAME AND CYBERSQUATTING
[15 U.S.C. § 1125(d)]

55. GMCI incorporates herein each and every allegation set forth in Paragraphs 1 through 43 as if fully set forth herein.

56. The domain name at issue, www.penthouseswimwear.com, consists solely of GMCI's famous PENTHOUSE mark coupled with the generic term "swimwear". GMCI owns trademark rights in PENTHOUSE by reason of its extensive use and registration of that mark. Defendant registered the domain name www.penthouseswimwear.com without authorization from GMCI with a bad faith intent to exploit the fame and goodwill of GMCI's PENTHOUSE Marks, in violation of the Anticybersquatting Consumer Protection Act, § 43(d) of the Lanham Act, 15 U.S.C. § 1125(d).

57. Defendant has never been authorized to use or register the domain name www.penthouseswimwear.com or any other domain name containing the PENTHOUSE Marks or any variation thereof.

58. Upon information and belief, the domain name www.penthouseswimwear.com was registered by Defendant with knowledge of GMCI's rights in the PENTHOUSE Marks, and long after the PENTHOUSE Marks had become distinctive and famous.

59. Upon information and belief, Defendant has acted with the bad faith intent to profit from the famous, distinctive PENTHOUSE

Marks and the goodwill associated therewith within the meaning of § 43(d)(1) of the Lanham Act.

60. The domain name at issue here does not consist of the legal name of the domain name registrant.

61. The registration and/or use of the subject domain name thus constitutes acts of cyberpiracy in violation of § 43(d) of the Lanham Act, 15 U.S.C. § 1125(d).

COUNT V
COMMON LAW TRADEMARK INFRINGEMENT

62. GMCI incorporates herein each and every allegation set forth in Paragraphs 1 through 43 as if fully set forth herein.

63. Defendant's aforesaid acts constitute false designation(s) of origin, false or misleading description(s) of fact, or false or misleading representation(s) of fact, which are likely to cause confusion, or to cause mistake, or to deceive as to affiliation, connection, or association with GMCI, or origin, sponsorship, or approval of Defendant's products and/or services by GMCI.

COUNT VI
COMMON LAW UNFAIR COMPETITION

64. GMCI incorporates herein each and every allegation set forth in Paragraphs 1 through 43 as if fully set forth herein.

65. Defendant's aforesaid acts constitute trademark infringement, misappropriation, and misuse of the PENTHOUSE marks, unfair competition, palming-off and passing-off against GMCI, and

unjust enrichment of Defendant, all in violation of Plaintiff's rights at common law.

66. Defendant's aforesaid acts have caused and will continue to cause great and irreparable injury to Plaintiff, and unless restrained by this Court, they will be continued and GMCI will continue to suffer great and irreparable injury.

COUNT VII
INJURY TO BUSINESS REPUTATION AND DILUTION

67. GMCI incorporates herein each and every allegation set forth in Paragraphs 1 through 43 as if fully set forth herein.

68. By virtue of extensive and substantial promotion and widespread sales of its products under the PENTHOUSE Marks and GMCI's maintenance of high quality standards relating to such products, the PENTHOUSE Marks possess a high degree of distinctiveness and have become famous. The PENTHOUSE Marks identify to the trade and public that GMCI is the exclusive source of products so identified, which enjoy an outstanding reputation for quality.

69. Defendant's aforesaid acts, commencing after the PENTHOUSE Marks became famous and distinctive, have diluted and are likely to continue to diluting the distinctive quality of the PENTHOUSE Marks, and have also injured GMCI's business and reputation in violation of Fla. Stat. § 495.151.

70. Defendant's aforesaid acts have caused and will continue to cause great and irreparable injury to GMCI, and unless said acts

are restrained by this Court, they will be continued and GMCI will continue to suffer great and irreparable injury.

COUNT VIII
BREACH OF CONTRACT

71. GMCI incorporates herein each and every allegation set forth in Paragraphs 1 through 43 as if fully set forth herein.

72. Defendants' aforesaid acts constitute material breaches of the License Agreement, inter alia:

- a. Section 4(n)(iii), for registering and using the domain names, www.penthouseswimwear.com and www.psmodelsearch.com, without GMCI's consent;
- b. Section 1 and Schedules 4 and 6, for advertising and using the PENTHOUSE Marks in connection with Unauthorized Events;
- c. Section 4(c) for failing to pay the Earned Royalties due and owing;
- d. Section 7(a)(ii), for failing to submit a full accounting upon termination;
- e. Section 7(b), for selling PENTHOUSE-branded merchandise and utilizing the PENTHOUSE Marks upon termination of the License Agreement and expiration of the Selloff Period.

73. Defendant's aforesaid acts constitute breaches of the covenant of good faith implied in the License Agreement.

74. Defendant's aforesaid acts constitute willful and unjustified breaches of the License Agreement.

75. GMCI has retained the undersigned law firm and pursuant to Section 9(h) of the License Agreement, is entitled to recover its reasonable attorneys' fee and costs.

COUNT IX
SPECIFIC PERFORMANCE

76. GMCI incorporates herein each and every allegation set forth in Paragraphs 1 through 43 as if fully set forth herein.

77. The parties entered into the License Agreement, and executed and delivered the License Agreement freely, pursuant to a careful reading and advice of counsel.

78. The License Agreement is not ambiguous in its terms, and there are no open conditions, and the License Agreement is valid and enforceable.

79. GMCI has no adequate remedy at law.

COUNT X
UNJUST ENRICHMENT

80. GMCI incorporates herein each and every allegation set forth in Paragraphs 1 through 43 as if fully set forth herein.

81. GMCI conferred a benefit upon Defendant by granting Defendant the limited use of the PENTHOUSE Marks and an opportunity to utilize and profit from GMCI's PENTHOUSE Marks.

82. Defendant accepted and appreciated this benefit.

83. As a direct and proximate result of Defendant's failure to pay GMCI the reasonable value of the benefit received by Defendant, GMCI has suffered damages and continues to suffer damages.

WHEREFORE, Plaintiff, General Media Communications, Inc., prays:

A. That this Court will adjudge that the GMCI's PENTHOUSE Marks and Registrations have been infringed and diluted as a direct and proximate result of the acts of Defendant as set forth in this Complaint, in violation of GMCI's rights under the Lanham Act, 15 U.S.C. §1051 et seq., and the common law.

B. That this Court will adjudge that Defendant has competed unfairly with GMCI as set forth in this Complaint, in violation of GMCI's rights under the Lanham Act, 15 U.S.C. §1125(a), the common law, and the License Agreement.

C. That Defendant, and all shareholders, principals, officers, directors, agents, servants, employees, attorneys, successors, and assigns, and all persons in active concert or participation therewith (collectively "Defendant Participants"), be preliminarily and permanently enjoined and restrained:

(1) From using any of the "PENTHOUSE" Marks, and any formative variations or phonetic or foreign equivalents thereof, or any term, name, mark or other designation which incorporates any of the foregoing, or any marks similar

thereto or likely to be confused therewith, in connection with the sale of any goods or the rendering of any services;

(2) From using any logo, trade name, or trademark which may be calculated to falsely represent or which has the effect of falsely representing that the products or services of Defendant, or any third parties, are sponsored by, authorized by, or in any way associated with GMCI;

(3) From preparing, manufacturing, purchasing, or otherwise acquiring any goods or services that utilize the PENTHOUSE Marks, and doing any other act or thing likely to cause the public or the trade to believe that there is any connection between Defendant and GMCI, or their respective products;

(4) From all further sales and commercial dealings that utilize any of the PENTHOUSE Marks, or any colorable imitation; and

(5) From preventing GMCI's designated accountant from reviewing and auditing Defendant's books of inventory, manufacturing orders, sales, receivables, and other books of accounts which may be used to determine the amount of unpaid royalties and other monies owed.

D. That Defendant be required to transfer and to direct any applicable domain name registrar or registry to transfer to GMCI the www.penthouseswimwear.com and www.psmodelsearch.com domain

names, and all other domain names registered by Defendant that are confusingly similar to any of the PENTHOUSE Marks.

E. That Defendant be required to remove and delete any and all references to the PENTHOUSE Marks and the PENTHOUSE-branded products and services on its www.divabikinis.com website, and on all other domain names registered by Defendant or Defendant Participants.

F. That this Court adjudge that the License Agreement was breached by Defendant.

G. That Defendant be required to deliver up to GMCI all products and inventory, including clothing, novelty items, promotional materials, advertisements, computer files and other written or printed materials that bear the PENTHOUSE Marks, or any colorable imitation thereof pursuant to Sections 7(c) and 7(f) of the License Agreement.

H. That Defendant be directed to file with this Court and to serve upon GMCI within thirty (30) days after service of the injunction issued in this action, a written report under oath, setting forth in detail the manner of compliance with paragraphs C through E.

I. That GMCI recover Defendant's profits and the damages of GMCI arising from Defendant's acts of trademark infringement, false designation of origin, false description or representation, unfair competition, dilution, breach of contract, and failure to

specifically perform its obligations.

J. That the Court treble such damages as awarded in accordance with paragraph I.

K. That GMCI recover, in addition to such sums as awarded in accordance with paragraphs I and J, punitive damages in an amount that the Court deems just and proper.

L. That GMCI recover pre-judgment and post-judgment interest on each and every award.

M. That GMCI recover its reasonable attorneys' fees incurred in this action, pursuant to Section 9(h) of the License Agreement, and/or as a result of a finding that this is an exceptional case pursuant to 15 U.S.C. §1117.

N. That GMCI have and recover its taxable costs and disbursements incurred in this action.

O. That GMCI have other and such further relief as the Court may deem just and proper.

Respectfully submitted,

GENERAL MEDIA COMMUNICATIONS, INC.

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Miami, Florida

By:


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